

No. 77-1639

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**In the Supreme Court of the United States**

**OCTOBER TERM, 1977**

**CHARLES EDWARD HAMPTON, PETITIONER**

**v.**

**UNITED STATES OF AMERICA**

**ON PETITION FOR A WRIT OF CERTIORARI TO  
THE UNITED STATES COURT OF APPEALS FOR  
THE SIXTH CIRCUIT**

**BRIEF FOR THE UNITED STATES  
IN OPPOSITION**

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**OPINIONS BELOW**

The judgment order of the court of appeals (Pet. App. A) is not reported. The order of the district court (Pet. App. D) is not reported.

**JURISDICTION**

The judgment of the court of appeals was entered on March 2, 1978. A petition for rehearing was denied on April 17, 1978. A petition for a writ of certiorari was filed on May 17, 1978. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

**QUESTIONS PRESENTED**

1. Whether petitioner was denied a speedy trial by the government's engaging in dilatory procedural maneuvers in order to gain a tactical advantage over petitioner.



2. Whether the district court erred in admitting evidence contradicting statements petitioner made at the time of his arrest.

3. Whether the district court properly admitted evidence of petitioner's delivery of a stolen truck one month before he was arrested for delivering stolen tractors.

#### STATEMENT

Following a jury trial in the Western District of Tennessee, petitioner was convicted of two counts of interstate transportation of stolen motor vehicles, in violation of 18 U.S.C. 2312 and 2, and one count of conspiracy to transport stolen motor vehicles, in violation of 18 U.S.C. 371. He was sentenced to two concurrent terms of five years' imprisonment on the substantive counts and a consecutive term of five years' imprisonment on the conspiracy count. The court of appeals affirmed (Pet. App. A).

The government's evidence disclosed that petitioner and an accomplice, James Elliott, travelled together through several mid-western states stealing farm equipment and motor vehicles. Elliott testified that from September 20, 1975, through October 13, 1975, he and petitioner stole tractors and vehicles in Indiana and Tennessee and transported them to other states. In the early hours of October 13, 1975, petitioner and Elliott were stopped by the police in Lakeville, Minnesota, while they were driving a tractor-trailer transporting two farm tractors. After checking the serial number on the tractors, the police determined that one of the tractors was stolen.<sup>1</sup> Thereupon petitioner was arrested (Br. 9-12).

<sup>1</sup>Elliott escaped on foot and was apprehended several months later. The police subsequently determined that the other tractor and the truck's trailer were also stolen.

#### ARGUMENT

1. Petitioner contends that the government deliberately delayed his trial by filing a notice of appeal from the district court's suppression order for the purpose of gaining a tactical advantage. The delay, it is alleged, was used to induce his codefendant Elliott to plead guilty, thereby making him available as a government witness at trial. These procedural maneuvers, petitioner argues, resulted in the denial of a speedy trial.

Petitioner and Elliott were indicted on February 10, 1976 (Pet. 11), and trial was originally scheduled for the week of August 30, 1976. Elliott failed to appear, and a bench warrant was issued for his arrest. While the case was being continued, petitioner filed motions to sever his case from Elliott's and to suppress evidence. Elliott was arrested on October 27, 1976, and on November 2, 1976, the district court granted in part petitioner's motion to suppress (Pet. 7; Pet. App. A-6).

On November 8, 1976, the government filed a protective notice of appeal in the district court. A transcript of the suppression hearing was transmitted to the Criminal Division of the United States Department of Justice on November 24, 1976. On December 22, 1976 the United States Attorney received a teletype from the Department advising him that on December 14, 1976 the Solicitor General had decided against appeal (C.A. App. A-74 to A-78).<sup>2</sup>

On January 6, 1977, petitioner filed a motion to dismiss his indictment alleging that the government had filed its notice of appeal to obtain a tactical advantage (Pet. App. A-5 to A-6) by delaying petitioner's trial in order to secure

<sup>2</sup>On January 14, 1977, the government moved to dismiss its appeal. The appeal was dismissed on January 31, 1977 (Pet. App. A-7; C.A. App. A-25 to A-26). "C.A. App." refers to the joint appendix in the court of appeals.

the testimony of codefendant Elliott, who had pleaded guilty on December 29, 1976. The district court ruled there was no evidence that the appeal was taken by the government in order to gain a tactical advantage or that petitioner was prejudiced by the delay (Pet. App. A-6). The court of appeals agreed (Pet. App. A-2).

Since both courts below found that the delay between November 8, 1976, when the government filed its notice of appeal, and December 29, 1976, when the prosecutor informed the court that the government was voluntarily withdrawing its appeal, was not for the purpose of obtaining a tactical advantage, this Court should not review this factual determination "in the absence of a very obvious and exceptional showing of error." *Berenyi v. Immigration Director*, 385 U.S. 630, 635. Here, in fact, petitioner has introduced no evidence to support his allegation. Instead, the record shows that the prosecutor was merely following established procedures of informing the Department of Justice of the loss of suppression issues and allowing the Department to make an informed decision on appealing the district court's order.<sup>3</sup> Accordingly, petitioner's conclusory claim presents no issue meriting further review.<sup>4</sup>

2. Petitioner also contends that the district court erred in admitting evidence of telephone records and the testimony of a witness, June Collier, which demonstrated there were

<sup>3</sup>The Solicitor General is responsible for "[a]uthorizing or declining to authorize appeals by the Government to all appellate courts." 28 C.F.R. 0.20(b).

<sup>4</sup>This case has no resemblance to *United States v. Didier*, 542 F. 2d 1182 (C.A. 2) upon which petitioner principally relies (Pet. 18-19). There the court held that the defendant was denied his right to speedy trial when the government delayed his retrial for 28 months until the court of appeals rendered a decision in a codefendant's case. The government had no sufficient reason for the delay which violated the local speedy trial plan that required retrial within 60 days.

discrepancies in statements made by petitioner to two officers at the time of his arrest (Pet. 3, 20-21).

When petitioner was stopped driving a tractor-trailer carrying stolen tractors, the officers noticed another man in the cab of the tractor-trailer who disappeared when petitioner was arrested. Officer Larson testified that petitioner stated that the other man was James Langston and that he had known Langston for only several days (C.A. App. A-105). On cross-examination by petitioner's counsel, Officer Larson testified that petitioner told another officer that he had known Langston for two or three months (C.A. App. A-108 to A-109). Codefendant Elliott testified that he was with petitioner when he was arrested in Minnesota and had known him since the late Fall of 1974. Over petitioner's objection, the government introduced telephone records showing that Elliott called petitioner in June and July 1975 and testimony from Elliott's former girlfriend, June Collier, that petitioner had visited her at Elliott's apartment in March 1975 (C.A. App. A-140 to A-141). Petitioner did not testify.

Since it was petitioner's defense that he was a truck driver who had been asked to haul tractors to Minnesota which he did not know were stolen, evidence that when he was stopped by the police he gave false statements about his traveling companion, was properly admitted as relevant to establish his motive and intent. See Rule 404(b), Fed. R. Evid. Petitioner's claim that the evidence cannot be used to impeach him since he did not take the stand is without foundation. Where, as here, statements of a defendant have been elicited by the defense, it does not infringe the defendant's right against self-incrimination for the prosecution to impeach the truthfulness of those statements



although the defendant did not take the stand. See, e.g., *United States v. Kahan*, 415 U.S. 239; *United States v. Pistante*, 453 F. 2d 412 (C.A. 9). In any event, petitioner does not challenge the admissibility of Elliott's testimony that he had known petitioner for at least a year prior to his arrest and that he was with petitioner when he was arrested in Minnesota. Since the jury learned of the discrepancies through his own counsel's cross-examination and Elliott's testimony, petitioner can hardly be heard to complain that he was prejudiced by evidence which merely corroborated Elliott's testimony.

3. Finally, petitioner contends (Pet. 23-28) that the district court erred in admitting evidence that he and Elliott had previously been to Minnesota to deliver a stolen truck.

Shortly after his arrest, Elliott gave statements to the F.B.I. indicating that he and petitioner had engaged in several thefts of motor vehicles and farm equipment. The district court reviewed these statements *in camera* (C.A. App. 186) and ruled that the government was entitled to introduce evidence of the one incident "most closely related in time" to show a common plan or scheme (C.A. App. A-196 to A-198). Accordingly, Elliott testified at trial that a month before he and petitioner delivered the farm equipment to Minnesota, they stole a truck in Missouri, delivered it to Minnesota, and split the proceeds (C.A. App. A-206 to A-208).

The district court plainly did not abuse its discretion under Rule 404(b) in admitting this evidence which disclosed petitioner's plan of stealing heavy farm equipment and motor vehicles and delivering them in another state for resale and rebutted petitioner's defense that he had no knowledge that the tractors he was delivering to Minnesota were stolen. See *United States v. Gamble*, 541 F. 2d 873 (C.A. 10); *United States v. Nasse*, 432 F. 2d 1293 (C.A. 7), certiorari denied, 401 U.S. 938.

Petitioner's prior participation with Elliott in auto theft was also relevant to establish the existence of the conspiracy to transport stolen motor vehicles with which petitioner was charged (541 F. 2d at 878).

#### CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

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